

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201803686	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/01/2018 6:43 PM	Location of Incident: East 35th Street and Cortelyou Road	Precinct: 67	18 Mo. SOL 11/1/2019	EO SOL 11/1/2019	
Date/Time CV Reported Thu, 05/10/2018 3:53 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 05/10/2018 3:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Delgado	699	955523	067 PCT
2. SGT David Grieco	03830	940216	067 PCT
3. POM Gregory Vasquez	21626	951369	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Andreas Sargent	24928	943785	067 PCT
2. POM James Morgante	07113	958951	067 PCT
3. POM Dennis Wu	18327	961463	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Delgado	Abuse: Police Officer Jose Delgado stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Gregory Vasquez	Abuse: Police Officer Gregory Vasquez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were a occupants.	
C.POM Gregory Vasquez	Force: Police Officer Gregory Vasquez pointed his gun at § 87(2)(b)	
D.POM Jose Delgado	Force: Police Officer Jose Delgado pointed his gun at § 87(2)(b)	
E.POM Gregory Vasquez	Abuse: Police Officer Gregory Vasquez frisked § 87(2)(b)	
F.POM Gregory Vasquez	Abuse: Police Officer Gregory Vasquez searched § 87(2)(b)	
G.SGT David Grieco	Abuse: Sergeant David Grieco authorized the search of the vehicle in which § 87(2)(b) was an occupant.	

### Case Summary

On May 10, 2018, § 87(2)(b) filed this complaint in-person at the CCRB.

On May 1, 2018, at approximately 6:43 p.m., § 87(2)(b) was driving in the vicinity of Cortelyou Road and East 35<sup>th</sup> Street in Brooklyn. § 87(2)(b)'s brother, § 87(2)(b) was a passenger in the vehicle. § 87(2)(b)'s vehicle was stopped by Police Officer Gregory Vasquez and Police Officer Jose Delgado from the 67<sup>th</sup> Precinct (**Allegations A-B: Abuse of Authority**, § 87(2)(g) PO Vasquez pointed his gun at § 87(2)(b) (**Allegation C: Force**, § 87(2)(g) PO Delgado pointed his gun at § 87(2)(b) (**Allegation D: Force**, § 87(2)(g) § 87(2)(b) exited the vehicle. PO Vasquez frisked § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g) PO Vasquez searched § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g) Sergeant David Grieco, from the 67<sup>th</sup> Precinct, authorized the search of § 87(2)(b)'s vehicle (**Allegation G: Abuse of Authority**, § 87(2)(g)

There is no video evidence in this case.

§ 87(2)(b) was summonsed for possession of marijuana as a result of this incident.

### Findings and Recommendations

**Allegation A - Abuse of Authority: Police Officer Jose Delgado stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B - Abuse of Authority: Police Officer Gregory Vasquez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b) testified that he left from his apartment with his brother, § 87(2)(b) in his grey Infiniti G35 (BR01). § 87(2)(b) is a § 87(2)(b) hair at the time of the incident, and was wearing a red hoodie. § 87(2)(b) is a § 87(2)(b). § 87(2)(b) and his brother were driving to a barber shop when they were pulled over by PO Delgado and PO Vasquez.

The investigation identified § 87(2)(b) as a witness to a shooting incident that occurred around the time of this incident. (BR02). § 87(2)(b) reported the following to the CCRB (BR03). § 87(2)(b) told officers that there were three black males, approximately 19 to 21 years old involved in a shooting outside § 87(2)(b). § 87(2)(b) described the gunman as a black male who had braided hair, a slim build, and was dressed in red pants, and a white t-shirt. The gunman attempted to hide the gun in the bushes. A second black male who § 87(2)(b) was unable to describe further, picked up the gun. The two males entered a silver Infiniti G35 and drove southbound on New York Avenue. The third black male ran away on foot. § 87(2)(b) provided the officers with this information almost immediately after the shooting because they arrived quickly.

Event documents and the associated police radio communications recordings revealed that officers transmitted that the shooter was in a grey Infiniti G35 (BR04-06). Less than two minutes

later, the Field Intelligence Officers Unit transmitted that they had the vehicle stopped at Cortelyou Road and East 35<sup>th</sup> Street which is four blocks away from the shooting location.

PO Delgado and PO Vasquez both provided the following generally consistent testimony (BR07-08). They responded to a radio run regarding a “ShotSpotter activation” at § 87(2)(b) and they arrived at the location within a couple minutes. They heard a radio transmission describing that a grey Infiniti G35 was involved in the shooting. PO Delgado and PO Vasquez observed a vehicle of the same make, model, and color a few blocks away from the shooting location. Based on this information, the vehicle was stopped on suspicion that the shooter was inside the vehicle.

A report by an identifiable eyewitness to a crime is presumed to be reliable. People v. Rivera, 210 A.D.2d 895 (1994) (BR10).

A specific vehicle description, consisting of a make, model, and color, combined with that vehicle’s spatial and temporal proximity to the scene of a crime will provide an officer with reasonable suspicion that the vehicle was involved in the reported crime. People v. Baldwin, 41 Misc. 3d 1217(A) (2013) (BR11).

The officers stopped a vehicle which exactly matched the make, model, and color described by an identifiable witness as the getaway vehicle used by an armed shooting suspect. The vehicle was stopped within a few minutes of when the crime occurred and in close proximity to the crime scene. § 87(2)(g)

**Allegation C – Force: Police Officer Gregory Vasquez pointed his gun at § 87(2)(b)**

**Allegation D – Force: Police Officer Jose Delgado pointed his gun at § 87(2)(b)**

§ 87(2)(b) testified that PO Vasquez approached the vehicle on the driver’s side with his gun pointed at him and that PO Delgado approached the vehicle on the passenger side with his gun pointed at § 87(2)(b)

§ 87(2)(b) provided a brief phone statement that was generally consistent with § 87(2)(b)’s account that PO Vasquez and PO Delgado had their guns pointed at them on approach (BR12). § 87(2)(b) was ultimately uncooperative with providing an in-person statement.

PO Vasquez and PO Delgado both testified that they did not remember if they drew their guns or pointed their guns at either occupant of the vehicle. Neither officer remembered if the other did so either. PO Delgado noted he may have had his hand on his holster given the nature of the shooting job they were responding to.

The decision to display or draw a gun should be based on an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide Procedure, 221-01.

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Abuse of Authority: Police Officer Gregory Vasquez frisked § 87(2)(b)**

**Allegation F – Abuse of Authority: Police Officer Gregory Vasquez searched § 87(2)(b)**

The following facts are undisputed. After initiating the vehicle stop, PO Vasquez told § 87(2)(b) to exit his vehicle and § 87(2)(b) immediately complied with this command. Upon exiting his vehicle, § 87(2)(b) told PO Vasquez that he had marijuana in his pocket and told him in which pocket he had the marijuana. PO Vasquez frisked § 87(2)(b). PO Vasquez removed a bag of marijuana from inside § 87(2)(b)'s pant pocket.

PO Vasquez stated he frisked § 87(2)(b) because he suspected he might have a weapon given he was the occupant of the vehicle identified as being part of the shooting. PO Vasquez did not feel anything that he suspected was a weapon. PO Vasquez searched the pocket specified by § 87(2)(b) to recover the marijuana.

Where an identified citizen informant has provided officers with information that the occupant of a specific vehicle might possess a weapon and fired shots, an officer will be justified in conducting a protective frisk of the vehicle occupant, as it is premised on a reasonable fear that the defendant may be armed. People v. Larkins, 116 A.D.2d 194 (1986) (BR13).

Where a person subjected to a lawful vehicle stop tells an officer that he has marijuana in his pocket, an officer will possess probable cause to search the defendant's pockets. People v. Wade, 143 A.D.2d 703 (1988)(BR14).

Given that § 87(2)(b)'s vehicle was stopped because it was suspected that the occupants were in possession of a gun which was just used in a shooting, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation G – Abuse of Authority: Sergeant David Grieco authorized the search of the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) is a § 87(2)(b) at the time of the incident. § 87(2)(b) was wearing a tan shirt under a red hooded sweatshirt, and black pants. § 87(2)(b) lives at § 87(2)(b) and this address appears on his driver's license.

§ 87(2)(b) testified that he and § 87(2)(b) were brought to the back of his car after they were ordered to exit the vehicle. Officers questioned them about whether they had been shot

at, which they denied. § 87(2)(b) and § 87(2)(b) were both brought to the 67<sup>th</sup> Precinct stationhouse and § 87(2)(b)'s car was brought to the stationhouse. § 87(2)(b) was released after being issued a summons for possession of marijuana. After being released, § 87(2)(b) returned to his car and observed that the contents of his center console were moved, the armrests in the backseat which allow access to the trunk had been moved, and a mat in the trunk was misaligned. In a phone statement obtained after his CCRB interview, § 87(2)(b) stated that a crowd of people was growing across the street from where his car was stopped as the incident progressed. There was also extensive vehicular traffic building up on Cortelyou Road during the incident (BR22).

§ 87(2)(b) stated that after she left the scene, an officer called her and asked her to appear for a showup, but she refused because she was afraid.

Event documents revealed that an anonymous female called 911 and reported that a black male with a gun dressed in a red shirt had entered § 87(2)(b), which is across the street from the shooting location. This information was relayed over the radio by central dispatch approximately four minutes after § 87(2)(b)'s vehicle was stopped, according to the time stamps on the event documents. PO James Morgante of the 67<sup>th</sup> Precinct testified he spoke with § 87(2)(b) who described the shooter as a black male, wearing a red jumpsuit, with braided hair, who stood approximately 5'11" tall, was possibly in his early 20s and had a skinny build. PO Morgante transmitted this description over the radio.

Sgt. David Grieco, the 67<sup>th</sup> Precinct Field Intelligence Officer, testified that he arrived at the location and was advised by officers that § 87(2)(b)'s vehicle was stopped because it matched the description provided over the radio (BR16). Sgt. Grieco was also advised by officers that marijuana was found on one of the occupants. Sgt. Grieco observed that one of the occupants of the vehicle matched the physical description of a suspect involved in the shooting that was subsequently provided over the radio. Specifically, one of the occupants was a black male, had braided hair, and was wearing red clothes. Sgt. Grieco heard a radio transmission that said the shooter was seen coming out of a specific building, he did not remember the address. Sgt. Grieco learned that either one or both of the occupants of the vehicle lived at that address, based on information from their IDs when they were being run for warrants. Based on the matching vehicle description, matching physical description, and matching address, Sgt. Grieco suspected the vehicle and its occupants were involved in the shooting and decided that the vehicle needed to be searched for weapons. Sgt. Grieco determined that the vehicle should be searched at the stationhouse and he made this determination based on safety concerns at the car stop location. Sgt. Grieco cited the proximity to the shooting location and the gathering of a crowd as said safety concerns. Sgt. Grieco did not remember if a showup was attempted with any witnesses of the shooting.

PO Delgado and PO Vasquez both testified that they searched the vehicle at the 67<sup>th</sup> Precinct stationhouse on the direction of Sgt. Grieco. Aside from the car matching the description in the radio run, neither officer knew why Sgt. Grieco made the determination to have the vehicle and its occupants processed at the stationhouse. PO Delgado recounted that an eyewitness to the shooting became uncooperative during the investigation, but he did not remember specific details



- 201207718 involved a substantiated stop allegation. The Board recommended Charges, and the NYPD enforced the forfeiture of one vacation day.
- 201405351 involved a substantiated entry allegation. The Board recommended Charges, but the NYPD enforced no penalty.
- Four CCRB complaints in which Sgt. Grieco is a subject are still under investigation.

### **Mediation, Civil and Criminal Histories**

- This case was unsuitable for mediation.
- As of August 7, 2018, the NYC Office of the Comptroller has no record of a Notice of Claim having been filed regarding this incident (BR19).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad No.: 5

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date